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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**STATE OF CALIFORNIA; and
CALIFORNIA HIGH-SPEED RAIL
AUTHORITY,**

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION; ELAINE L. CHAO,**
in her official capacity as Secretary of the
Department of Transportation; **THE
FEDERAL RAILROAD
ADMINISTRATION; RONALD L.
BATORY,** in his official capacity as
Administrator of the Federal Railroad
Administration,

Defendants.

Case No. 3:19-cv-02754-JD

**STIPULATION REGARDING RE-
OBLIGATION OF GRANT FUNDS**

STIPULATION REGARDING RE-OBLIGATION OF GRANT FUNDS

WHEREAS, on May 16, 2019, Ronald L. Batory, Administrator of the Federal Railroad Administration (“FRA”), issued a final decision to the California High-Speed Rail Authority (“Authority”) terminating Cooperative Agreement FR-HSR-0118-12-01-01 between the Authority and FRA (“FY 10 Agreement”), and FRA de-obligated the \$928,620,000 in funding obligated to the Authority by the FY 10 Agreement;

WHEREAS, by this action filed against Defendants U.S. Department of Transportation; Elaine L. Chao, Secretary of Transportation; FRA; and Ronald L. Batory, Administrator of the FRA, Plaintiffs State of California and California High-Speed Rail Authority challenge the May 16, 2019 termination of the FY 10 Agreement, and de-obligation of the \$928,620,000 in funding obligated to the Authority by the FY 10 Agreement;

WHEREAS, Defendants’ final decision states (at page 25, footnote 32) that the de-obligated funds remain available until expended for the originally authorized purpose and that, historically, FRA’s competitive grant programs are oversubscribed, with applicants seeking more funding than FRA has available;

WHEREAS, Defendants’ final decision further states (at page 25, footnote 32) that “FRA may solicit new applications for these funds to pursue eligible intercity passenger rail projects”;

WHEREAS, Plaintiffs seek a judicial declaration that Defendants’ final termination decision was arbitrary, capricious, an abuse of discretion, and contrary to law under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706;

WHEREAS, Defendants oppose such relief and deny that Defendants’ final termination decision was arbitrary, capricious, an abuse of discretion, or contrary to law under the APA;

WHEREAS, Plaintiffs seek an order setting aside Defendants’ final decision, and enjoining Defendants from re-obligating the funds awarded under the FY 10 Agreement to programs or recipients other than the Authority, or otherwise transferring or re-allocating the funds;

WHEREAS, on May 20, 2019, Plaintiffs informed Defendants, through counsel, that they intend to seek a temporary restraining order that would prevent Defendants from taking any action to re-obligate, transfer, or award, in any manner, to any other activity, program, or

1 recipient, any of the \$928,620,000 awarded to the Authority under the FY 10 Agreement, and
2 after that, a preliminary injunction barring Defendants from taking any such action until judgment
3 is entered in the case;

4 WHEREAS, Defendants have informed Plaintiffs that (1) the \$928,620,000 in FY 10
5 Agreement funding de-obligated by Defendants' final decision will not be re-obligated,
6 transferred, or awarded to any program(s) or recipient(s), except through a new Notice of Funding
7 Opportunity ("NOFO") and award to be issued by Defendants pursuant to applicable rules and
8 regulations and standard practices and procedures, and for purposes authorized by the
9 appropriation that funded the FY 10 Agreement; (2) Defendants have no present intention to issue
10 a new NOFO to re-obligate the \$928,620,000 in FY 10 Agreement funds; and (3) FRA estimates
11 that its grant funding process would take a minimum of four months from the issuance of a
12 NOFO to the issuance of a grant award(s); and

13 WHEREAS, the parties wish to avoid unnecessary, emergency motion practice,

14 NOW THEREFORE, BASED ON THE FOREGOING, the parties, through their counsel,
15 further stipulate and agree as follows:

16 (1) Defendants U.S. Department of Transportation; Elaine L. Chao, Secretary of
17 Transportation; Federal Railroad Administration; and Ronald L. Batory, Administrator of the
18 Federal Railroad Administration, agree that no portion of the \$928,620,000 in FY 10 Agreement
19 funding de-obligated by Defendants' May 16, 2019 final decision will be re-obligated,
20 transferred, or awarded to any other program(s) or recipient(s), except through a new Notice of
21 Funding Opportunity and award to be issued by Defendants pursuant to applicable rules and
22 regulations and standard practices and procedures, and for purposes authorized by the
23 appropriation that funded the FY 10 Agreement.

24 (2) Plaintiffs State of California and California High-Speed Rail Authority will not move
25 the Court for a temporary restraining order or preliminary injunction to prevent re-obligation of
26 the FY 10 Agreement funding unless and until Defendants issue a new NOFO to re-obligate any
27 portion of the FY 10 Agreement funding.
28

1 **IT IS SO STIPULATED.**

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ATTESTATION

I, Sharon L. O'Grady, am the ECF user whose identification and password are being used to file the STIPULATION REGARDING RE-OBLIGATION OF GRANT FUNDS. In compliance with Local Rules 5, 6, and 7-12, I hereby attest that M. Andrew Zee concurred in this filing.